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Via E-Mail, Fax and U.S. Mail

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Re: Comment On Proposed Change to PERB Regulations on Proof of Support

Dear General Counsel Bogert:

I am writing on behalf of the Service Employees International Union, California State Council, to comment on PERB's proposed changes to its regulations concerning proof of support.

1. Revocation of proof of support

Proposed regulations §§32705, 61025, 81025 and 91025 set forth the terms by which an employee can revoke a signature in support of a card check petition. There are two critical problems with these proposed regulations:

A. The proposed revocation regulations do not adequately protect against employer coercion. A central aim of the card check laws is the elimination of employer coercion. Yet employers have abused the card check process by either explicitly soliciting employees to withdraw union authorizations, or by exerting more subtle pressure such as by drafting revocation cards and offering to "assist" employees to revoke authorization. (The latter was the case in *Antelope Valley Health Care District* (2006) PERB Decision No. 1816-M, where the employer sent an unsolicited email to its employees explaining precisely how to revoke a union authorization card, and directing employees to the human resources department if they had questions). Both types of conduct are unfair labor practices under federal law. *See, e.g., The*

Guard Publishing Co., 344 NLRB No. 150 (2005) (unfair labor practice to provide unsolicited advice and assistance in revoking union authorization cards); *Bridgestone/Firestone, Inc.*, 332 NLRB No. 56 (2000) (unfair labor practice to solicit employees to initiate or sign decertification petition); *American Linen Supply Co.*, 297 NLRB 137 (1989) (unfair labor practice to furnish withdrawal forms to employees and notaries during work time to help process withdrawal cards); *Adair Standish Corp. v. N.L.R.B.*, 912 F.2d 854, 857 (6th Cir. 1990) (unfair labor practice for supervisor to inform employees that supervisor has copies of forms to revoke union authorization).

The proposed regulation would require the employee – rather than the employer – to submit the revocation card to PERB. This does not go far enough. PERB should add new sections to the revocation provisions in §§32705, 61025, 81025 and 91025 that explicitly prohibit employer involvement in revoking authorization cards, as follows:

(d) The Board shall disregard and not take into account any revocation card or letter if the employer assisted or provided advice to its employees regarding revoking authorization, or otherwise solicited its employees to revoke authorization.

B. The proposed regulations also fail to explain what happens if an employee signs an authorization card, revokes that card, and then signs another authorization card. Under the proposed regulation, a revocation card nullifies that employee's proof of support. But employees may, after further thought, later sign another union authorization card. The regulations should make plain that an employee's last expressed intent governs. The revocation provisions in §§32705, 61025, 81025 and 91025 should be amended by adding the following provision:

(b) (5) Have been signed after the employee's last manifestation of support for an employee organization. The Board shall not take into account any employee's revocation if that employee or his or her authorized representative submits proof of support that is signed and dated after the date of the revocation request.

2. Change to language on proof of support documents

The card check regulations should not be amended to require that all documents used to establish employee support for card check recognition "clearly demonstrate that the employee understands that an election may not be conducted." §§32700(a)(1), 61020(a)(1), 81020(a)(1) 91020(a)(1). There are two principal reasons to reject this proposed change:

A. First, there is no reason for a card to acknowledge that an election may not be conducted. The card check process is a legislatively-sanctioned alternative to an election. It is not a backdoor around the election process, but an equally-legitimate means to show majority support. Requiring proof of support documents to acknowledge that there may be no election implies that by signing the card an employee gives up some substantive right, which is not the case. There is no more need to acknowledge that an election may not be conducted than there is

need to show, on an election petition, that an employee knowingly waives the right to card check recognition.

B. Second, as a practical matter, the proposed change will cause confusion. The regulations currently allow a union to use dues deduction forms and membership applications, among other documents, as proof of support. §§32700(e), 61020(e), 61020(d), 81020(d) 91020(d). This makes sense because membership applications and dues deduction forms evidence an employee's desire to be a member of and represented by the union. But it will be confusing and cumbersome to change internal union forms so that every employee who joins the union or executes a dues deduction form must first acknowledge that no election may be conducted. Moreover, as explained above, there is no logical reason to make such a change, as employees are not giving up any substantive right by authorizing the union to represent them through the card check process.

3. Board determination regarding proof of support

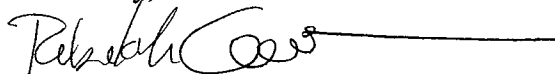
The proposed changes to §§32784(a), 61470(a), 81470(a), 91470(a), eliminating the deadline for employers to provide a list of employees to PERB, should be rejected. Under the current regulations, when a petition is filed to modify an existing unit, the employer must provide an employee list within 20 days. The proposal to eliminate this timeframe and require the employer to provide the list only "as directed by the Board" will simply create uncertainty and delay. There should be a standard time for employers to submit the list in every case. There is no reason for a case by case determination on this basic matter.

4. Proof needed to demonstrate majority support

The proposal to eliminate the power of the Board to determine whether unenumerated documents may constitute proof of support should be rejected. Sections 32700(e), 61020(d), 81020(d) and 91020(d) set forth a list of documents that may constitute proof of support. The current list includes "Other evidence as determined by the Board." The proposed amendment would delete that provision, so that only the enumerated documents would constitute proof of support. This change should be rejected. Even if that provision is little-used, there is no harm in allowing it to remain as an option. The Board should be given the discretion and flexibility to consider, as proof of support, those documents that demonstrate an employee's intent to join a union, pay dues to the union, or seek representation from the union, even if such document does not fit within the enumerated categories of proof of support documents.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Rebekah B. Evenson", followed by a horizontal line.

Rebekah B. Evenson